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No. 829

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

DORA BRADY and LUCINDA WATASHE,
Petitioners,

vs.

ANNIE BEAMS, et al.,
Respondents.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION AND JUDGMENT OF CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

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Come now, petitioners, Dora Brady and Lucinda Watashe, and as their Petition for Rehearing herein state that the Petition herein for the issuance of a *Writ of Certiorari* to review the proceedings, decision and judgment of the United States Circuit Court of Appeals, Tenth Circuit (*Scott* v. *Beams, et al.*, 122 Fed. [2d] 777), affirming the

proceedings and judgment of the United States District Court for the Eastern District of Oklahoma, which adjudged the respondents, Annie Beams, et al., to be the heirs to the estate of Jackson Barnett, deceased, was denied by this Court, along with several unrelated Petitions for Writs to review said decisions, in an Order entered on March 2, 1942, in material part as follows:

> " * * * In Nos. *829*, 847, 850, and 906, the motions for leave to proceed further in forma pauperis are denied for the reason that the Court, upon examination of the papers submitted, finds no ground upon which writs of certiorari should be issued. The petitions for writs of certiorari are therefore also denied."

That the Court in so finding and concluding that in No. 829, *Dora Brady, et al.* v. *Annie Beams, et al.*, *"no ground was presented upon which a Writ of Certiorari should be issued", and in denying same in the belief of petitioners*, inadvertently in the press of judicial business, and because of the voluminous record herein, and the confusion necessarily occasioned by the effort on the part of other petitioners to append several unrelated petitions to the Petition and Record of petitioners herein, overlooked and failed to note, consider, and evaluate the several basic grounds herein which present radical departures on the part of the trial judge from the usual, fair, impartial, disinterested, and accepted judicial procedure, and which grounds call for the exercise of the power of supervision and correction possessed

by this Court under the Constitution and laws and Rule 38 of the Court.

That petitioners and counsel for petitioners yield to no one in their high decree of respect for the courts, and, *because of said respect, deem it an imperative duty to frankly, fully, clearly and accurately restate the said impelling grounds for the exercise herein of the Court's high and most important jurisdiction, function and duty to review and correct a proceeding and judgment wherein national courts have "so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such departure by a lower court, as to call for an exercise of this Court's power of supervision"* (Rule 38, para. 5 [b]).

That stripped of immaterial detail that could only serve to confuse, *and presenting only statements of unquestioned record facts for which counsel for petitioners vouch, and the truth of which has not and cannot be questioned,* said good, sufficient and heretofore accepted grounds for the review of such proceedings and judgment, as is herein involved, are restated as follows:

1. (a) That the United States Attorney, having, in compliance with instructions, interpled in this action to determine the heirs of Jackson Barnett, a deceased full-blooded Creek Indian, for and in the name of the United States, specially and solely on behalf of all restricted Indian claimants to said heirship, including petitioners, Dora Brady and Lucinda Watashe, the Assistant United States

Attorney thereafter, and months before this action was set for trial, purporting to represent the United States, on behalf of all said restricted Indian parties, and the Honorable Robert L. Williams, who at the time had been designated as the judge to try this proceeding in the United States Court for the Eastern District of Oklahoma, did, without the knowledge of petitioners or their counsel, prior to and in October, 1936, before petitioners had taken any depositions or presented any evidence, collaborate, confer, and advise together in and about the negotiation, execution and approval by the Departments of Justice and Interior of the United States, and the carrying out of an "agreement" or "family settlement" by and between the groups of respondents, Annie Beams, et al., claimants to said heirship, which had as its stated purpose the securing of a judgment in said court in which said judge was to preside, adjudging said respondents to be the heirs of the said Jackson Barnett, deceased, to the exclusion of petitioners, Dora Brady, et al., claimants other than respondents. (Reasons for allowance of *Writ of Certiorari*, Numbers 1, 2, and 3, pp. 34-36 and 48-111, Petition for *Writ of Certiorari* and Supporting Brief herein.)

(b) That said Assistant United States Attorney and said designated trial judge, prior to October 13, 1936, and almost five months before this proceeding was first set for trial on March 22, 1937, did so collaborate in securing the approval of the said "agreement" or "family settle-

ment" by the officers of the Departments of Justice and Interior to the end that the respondents, Annie Beams, et al., should without doubt be adjudged in said court to be the heirs of said Jackson Barnett, deceased, and the petitioners and all other claimants be defeated in this proceeding, and that the approval of the said "agreement" or "family settlement" by the said trial court was used in influencing said officers to approve same, is clearly established by the correspondence had at the time between the said Assistant United States Attorney and the said officers of the said Departments. That in a letter written by the said Assistant United States Attorney, in the name of the United States Attorney, on October 13, 1936, to the Attorney General, Washington, D. C., it is, among other things, stated:

> "Re: In the Matter of the Estate of Jackson Barnett, Deceased, No. 4556 Equity, Consolidated; Dept. File. HWB-CEC-207695-22;
>
> "I have the honor to acknowledge the receipt of your letter of October 7, 1936, with enclosures, in which you ask for certain information and reports in connection with the above entitled matter.
>
> *"I note that the letter of the Acting Secretary expresses some doubt as to the power of the Secretary to approve the agreement in question, and suggests that its approval might embarrass or prejudice the United States or other parties in the conduct of the litigation.* * * *.
>
> (Said approval certainly did prejudice and defeat the other parties.)

"* * * It is suggested that after the determination of heirship, the Secretary might have no authority to do anything but deliver the estate to the persons directed to the decree. * * * (No doubt this suggestion is sound.)

" * * * *The approval of this agreement cannot embarrass or prejudice the United States in the conduct of the litigation. On the contrary, the approval would materially assist the United States and the full-blood Indians embraced in the three groups.* * * * (Wherein would the approval assist the United States?)

" * * * It seems to me that it is good policy to divide this large estate among as many full-blood Indians as possible, provided, of course, they are blood kin of Jackson Barnett and entitled to inherit.

" * * * *I was advised with at the time this contract was first considered.* The opposing angles between these groups became manifest in the taking of the depositions and the cross-examination of witnesses. The fact was also realized by the parties that one group might prevail and that the other groups might be defeated, although in fact heirs. *The size of the estate justifies a compromise settlement between these claimants, on the theory that they are all in fact blood kin and that in equity and good conscience they should all inherit. I think I am familiar with the facts leading up to this agreement, and I heartily approve the same.* (What facts?)

"*You ask to be advised as to any views with reference to this contract expressed by the trial court. Upon receipt of your letter, I presented the matter to Judge Williams and he was kind enough to frankly discuss the matters involved with me at some length.* * * *" (What matters did the trial judge frankly discuss at some length?)

(How did the Attorney General know the judge who had been assigned to try this case had *expressed*

any *views* with reference to the "agreement" or "family settlement?" Evidently, there had been prior correspondence or communication with regard to same.)

" * * * However, the Court did state if this were a combination or agreement between full-bloods to make a joint effort to defeat the claim of the negro claimants, as wife and children or other non-Indian claimants, that this probably would not be against public policy. *The Court stated that he thought the contract was all right, and that, if approved by the Secretary of the Interior and if it should not be against public policy within the decisions, he would make any orders in his power which would be right and proper to carry same into effect.* * * *"

Is it not clear from the above that the said trial judge was pledged in the event the "agreement" or "family settlement" was approved by the Secretary of the Interior, and was not against public policy, to *"make any orders in his power which would be right and proper to carry same into effect"? It also appears from the record that the Secretary of the Interior on the judges approval of the "agreement" or "family settlement" also approved same, and the trial judge removed the other condition by himself approving said "agreement" or "family settlement" with the result that the judge was free to make proper order to carry same in effect and accordingly entered judgment for respondents so as to carry said "agreement" into effect just as said judge had agreed.*

The said attorney then explains in said letter *the reasons supporting his desire to defeat all claimants other than the respondents, Annie Beams, et al.,* and concludes his

letter as follows:

> **" * * * To do this, it appears to me that a special investigator should be assigned to this office at the earliest possible date to work on this phase of this case, and I so recommend." (Curns Exhibit 43.)**

(c) That influenced by and based upon the said representations contained in the said letter, among same being that the trial judge approved, and the other therein indicated communications, the said Attorney General and the acting Solicitor of the Department of the Interior, Frederick L. Kirgis, approved the said "agreement" or "family settlement", and in a letter dated April 8, 1937, the Secretary of the Interior was so advised and thereupon also approved same. In said letter of the Acting Solicitor the above report or letter of the said United States Attorney is quoted at length and referred to in part as follows:

> " 'It has been suggested that the contract may be against public policy, but it is not entirely clear that this is true. *The United States Attorney in charge of the litigation has stated his approval of the contract and has also discussed the matter with the United States District Judge. The latter has indicated his view that the contract 'probably would not be against public policy'* ". * * *
>
> **(Note the statement that said United States Attorney was in charge of the litigation and that he and the trial judge approved the agreement.)**
>
> " * * * *In support of his recommendation the United States Attorney states that such approval will not only embarrass or prejudice the United States in the conduct of the litigation but on the contrary will materially assist the Government and the full-blood Indians signatory in the agreement.* * * * " (What about the full-

blooded restricted Indians who were not parties to the "agreement"?)

Petitioners respectfully state that it is pertinent to inquire as to just why, as stated in said letter, it would materially assist the United States Government, *as an interpleader herein on behalf of all the restricted Indian claimants to said heirship*, to defeat the claim of these petitioners, Dora Brady and Lucinda Watashe, who are restricted Indian claimants to such heirship, and to make certain through the approval of said agreement, the adjudications of respondents, Annie Beams, et al., to be such heirs to the exclusion of these petitioners? Petitioners further state that it is obvious from the substance of said correspondence that it was the belief of the Assistant United States Attorney and the representatives of the said Departments, that the approval of said "agreement" or "family settlement" would have the effect of securing the adjudication of respondents, Annie Beams, et al., to be such heirs to the exclusion of all other claimants, and that said trial judge had so stated if the "agreement" was not against public policy, and that it is further clear from the record herein presented that such was the effect of said "agreement" or "family settlement."

Petitioners state that the only attempted explanation of said collaboration acts and doings of the said Assistant United States Attorney and trial judge, which was continued throughout said purported trial, was the belated and ridiculous statement on pages 192-196, Vol. III of

Appellee's Brief filed herein in the Circuit Court of Appeals, (Vol. II. pp. 192-196. Appendix herein), *in substance that the reason and objective of said collaboration was to ascertain from the said trial judge whether the execution and approval of the said "agreement" or "family settlement" would be deemed contemptuous!*

It is obvious that said statement in the nature of things could not be true, and that it is in the face of the facts set forth in the above quoted correspondence between the said Assistant United States Attorney and the officers of the said departments which occurred at the time and wherein said officers were advised of the collaboration and statement of the trial judge, and no mention is made of any such fear of being adjudged in contempt, and wherein it is clearly stated that the objective of such collaboration was the adjudging of respondents, Annie Beams, et al., to be the heirs of Jackson Barnett as against petitioners and all other claimants in this action.

That the dire strait in which counsel for respondents, Annie Beams, et al., found themselves in attempting to explain the participation of the trial judge in their plan to secure a judgment in favor of respondents, Annie Beams, et al., and against petitioners and other claimants to said heirship, aptly illustrates the danger resulting from such obstruction of the course of justice.

(d) That thereafter the petitioners, Dora Brady and Lucinda Watashe, duly filed an application or motion for an order declaring a mistrial on account of the said dis-

qualification of the trial judge to hear and determine the issues herein and which motion was overruled (pp. 704-710, Vol. II Clk's. Tr. herein). That after a purported hearing and trial, the salient facts of which are hereinafter presented, judgment was rendered adjudging the respondents, Annie Beams, et al., to be the heirs to the estate of said Jackson Barnett, deceased, to the exclusion of all other parties, in accordance with said "agreement" or "family settlement."

(e) Petitioners respectfully state, aside from and without considering the other grounds or reasons presented in the Petition for the issuance of said Writ herein, and which are hereinafter presented, it is obvious from the above stated unquestioned record acts and facts, clearly revealing the nature, purpose, and effect of the said collaboration by said Assistant United States Attorney and the said trial judge, and the judicial action said judge therein stated would be taken in favor of respondents, Annie Beams, et al., upon the approval of the said "agreement" or "family settlement," that the said United States Attorney, although purporting to represent the United States as interpleader of all restricted Indian claimants to said heirship, and the said trial judge, both thereafter became and were necessarily partisans of counsel for respondents, Annie Beams, et al., as against petitioners, Dora Brady and Lucinda Watashe, in the execution of the purpose of said "agreement" or "family settlement", which was to secure,

in the court presided over by the said trial judge, a judgment adjudicating that said respondents, Annie Beams, et al., were the heirs of the said Jackson Barnett to the exclusion of petitioners, Dora Brady and Lucinda Watashe, *and that it follows that the said trial judge was disqualified thereafter to hear evidence on or determine any of the issues in this action. That in such state of the unchallenged record and facts the sole controlling question is as to whether the Court will, in its sound judicial discretion, exercise its jurisdiction and function of supervising and correcting such proceedings and judgment wherein it appears that there has been a departure from the accepted and usual course of fair, impartial and honest judicial procedure.*

(f) Petitioners state that, as clearly appears from the opinion of the Circuit Court of Appeals, Tenth Circuit, in *Scott* v. *Beams, et al.*, and four other cases, Nos. 2174-2178, purporting to decide, but in fact failing to consider or decide the points presented in the separate appeal of petitioners, *Dora Brady and Lucinda Watashe* v. *Annie Beams, et al.*, No. 2176, in affirming the judgment of the District Court adjudging said Annie Beams, et al., to be the heirs of said Jackson Barnett, deceased, to the exclusion of these petitioners, Dora Brady and Lucinda Watashe, overlooked the true nature, scope, and effect of the above unquestioned record facts, *which conclusively establish that the said trial judge, after being designated to try this case, and long before this case was set for trial, without the*

knowledge of petitioners or their counsel, did collaborate with said Assistant United States Attorney, who purported to represent the United States as interpleader on behalf of all restricted claimants to said heirship, including these petitioners, but who in fact was secretly representing the respondents, Annie Beams, et al., in and about the execution, approval, and carrying out of said "agreement" or "family settlement" by and between said respondents, having as its stated objective the rendition of a judgment herein by said trial judge establishing the heirship of said respondents, Annie Beams, et al., to the estate of the said Jackson Barnett and denying the claims of all other parties, and that the said trial judge did during said collaboration stated to the said Assistant United States Attorney *"that if approved by the Secretary of the Interior, and if it should not be against public policy within the decisions, he would make any orders in his power which would be right and proper to carry same into effect," and that the said statement of said trial judge was reported by the said Assistant United States Attorney to the Department of the Interior and was effectively used in securing the approval by the said Department of the said "agreement" or "family settlement," and that thereafter the said trial judge held said "agreement" or "family settlement" to be valid and not against public policy and entered judgment thereon in accordance with said statement of said trial judge, and in favor of the respondents, Annie Beams, et al., and against*

all other claimants, and that on account of the said collaboration and said statement the said judge was thereafter disqualified to hear, consider or determine any issue between the said respondents, Annie Beams, et al., and all other claimants to said heirship.

(g) That the affirmance by the said Circuit Court of Appeals of said judgment so rendered by said trial judge so disqualified on account of said collaboration, statement, and interest, occurring and arising prior to the purported trial, was clearly in effect a direct, although inadvertent, sanctioning of a most radical departure by the said trial judge from the accepted, usual, impartial, disinterested, and fair course of judicial procedure and under the plain language of paragraph 5b of Rule 38, this Court has the jurisdiction to review said proceedings and judgment through the issuance of its *Writ of Certiorari.*

Petitioners state that under the Constitution and Laws of the United States and said Rule 38, this Court has the jurisdiction, function and duty to supervise and correct such jurisdictional wrong as that here presented, and that the record of procedure of National Courts in instances similar in legal effect to that presented in the case at bar, is that such courts are astute in finding a method for the review of such proceedings and judgments, although same may have become final, where in the conduct and rendition of which, a disqualified judge participated. Petitioners refer to recent cases perfectly in point here as follows:

In re: 671 Prospect Avenue Holding Corp., 105 Fed. (2d) (Second Circuit) 960, Superseding Opinion in 97 Fed. (2d) 513.

Art Metal Works v. *Abraham & Straus*, 107 Fed. (2d) (Second Circuit) 940 and 944, Certiorari Denied December 11, 1939, 309 U. S. 696, 60 Sup. Ct. 611.

Electric Auto-Lite Co. v. *P. & D. Manufacturing Co., Inc.*, 109 Fed. (2d) (Second Circuit) 566, and 78 Fed. (2d) (Second Circuit) 700.

General Motors Corp. v. *Preferred Electric & Wire Corp.*, 79 Fed. (2d) (Second Circuit) 621. Certiorari Denied, 296 U. S. 655, 56 Sup. Ct. 381. Judgment thereafter set aside because of participation of disqualified judge, 109 Fed. (2d) (Second Circuit) 615.

Petitioners most earnestly and respectfully state that if said such judgment, so rendered in this proceeding, wherein the trial judge so flagrantly violated the imperative rules requiring disinterest, impartiality and fair considerate hearing and just decision, and the inadvertent affirmance of said proceedings and judgment by the Circuit Court of Appeals, be in effect approved through the refusal of this Court to consider, review and pass upon said proceedings and judgment, it is urged that such occurrence "will mark the first step toward the abandonment of that imperative requisite of even-handed justice proclaimed by Chief Justice Marshall more than a century ago that the judge must be "perfectly and completely independent with nothing to influence or control him but God and his conscience.' " *United States* v. *Manton*, 107 Federal (2d) (Second Circuit) 834,

Loc. Cit. 846—Opinion by Mr. Justice Southerland, concurred in by Mr. Justice Stone and Circuit Judge Clark.

Petitioners further state that, since the stated collaboration, statements, and interest of said trial judge, and his resultant disqualification was in part discovered by petitioners, Dora Brady and Lucinda Watashe, and said facts, so in part discovered, were pled in applications, affidavits, and motions filed herein before the said judgment was rendered herein, and all possible proceedings taken to prevent said disqualified judge from thereafter purportedly considering and determining the issues and rendering judgment herein, that this Court, having jurisdiction so to do, in the exercise of its sound judicial discretion, may review the said proceedings and judgment and consider and determine the issues herein presented, and save subsequent judicial proceedings and adjudication requisite for relief against such void or at least voidable judgment.

2. (a) That an agreement between litigants, such as the one here presented among groups of respondents, Annie Beams, et al., relating to the proceedings and issues in an action in court, which by its terms permits its use, and which in fact, as the above stated record shows, was so employed herein (Pp. 4-9 and 35-36, Petition for Writ and Supporting Brief herein, and *supra*), in influencing the trial judge to render a judgment in favor of respondents, is inconsistent with the full, impartial and unobstructed course of justice, and is improper, illegal and against pub-

lic policy, although such agreement would not necessarily be adjudged illegal and against public policy where same is not so employed, as the said record shows said "agreement" or "family settlement" was employed in the case at bar, to obtain the active support of the administrative and judicial officers of the Government and the trial judge in securing the judgment herein in behalf of respondents, Annie Beams, et al., and against petitioners (Pp. 48-51, Petition for Writ and Supporting Brief herein wherein this ground is presented).

(b) That having on behalf of the United States interplead all restricted Indian claimants to said heirship, including petitioners, Dora Brady and Lucinda Watashe in this proceeding to determine the heirs of said restricted estate, and while so appearing and being in control of said case and acting for the protection of the United States, as well as in the interest of all such restricted Indian claimants, including petitioners, it follows that thereafter the Assistant United States Attorney was without legal or moral right to, without notice or authority, to so switch his representation to respondents and to participate on behalf of said respondents, Annie Beams, et al., in negotiating, presenting, and securing the execution of the so-called "agreement" or "family settlement", among and on behalf of said respondents, on the part of the officers and representatives of the Departments of the Interior and Justice, and the trial judge, with the purpose of aiding in obtain-

ing a judicial adjudication that said respondents were heirs to the said estate as against and to the exclusion of these petitioners, and other restricted Indian parties.

(c) Petitioners state the fact to be that the said Assistant United States Attorney did not so abandon the equal representation of all said interplead restricted Indian claimants herein and actively represent the respondents, Annie Beams, et al., as against all other claimants, while purporting to be the attorney for the United States as interpleader herein, on account of and as the result of an examination or study of the facts and merits of the claim of any party to this action, and that the said United States Attorney so testified herein, after his said abandonment had occurred as follows:

A. "Oh, no, I never did what you would call investigate a claim. I don't think I heard a Wesley Barnett claim at that time * * * (when he assisted in negotiating said 'agreement').

Q. Then there were full-blooded Indians (claimants) you knew nothing about at the time you wrote this letter? (The letter to the Attorney General relating to the claim of respondents, Annie Beams, et al., being Curn's Exhibit "43").

A. Oh, yes, lots of them." (Pp. 8548-8549, Vol. 18, Rep. Tr., pp. 16-17, Reply Brief herein.)

That after the said discovery of said collaboration of the Assistant United States Attorney with the said trial judge, beginning at that time and extending throughout the proceeding and to the entry of judgment herein, in accordance with the said "agreement" or "family settlement",

the said assistant United States Attorney was interrogated as a witness herein as to his authority to switch his representation on behalf of the United States from all restricted Indian parties to the representation of respondents, Annie Beams, et al., and said attorney answered that he had no express authority so to do as follows:

A. " * * * I don't think I got any answer to that letter (Curns Exhibit 43). I just supposed that closed the matter, and that it was satisfactory to him. * * * "

Q. You just supposed that?

A. I got no answer. If I write an explanation and you say nothing more, wouldn't you suppose that was a satisfactory explanation. That is the way I took it.

Q. You have never since that time received authority to appear for these persons (the respondents, Annie Beams, et al.) as against other groups?

Mr. Richardson (representing respondents): That is objected to, incompetent, irrelevant, immaterial, indefinite.

The Court: I think he should insert the correspondence if he has any. This way is a conclusion.

A. I received no letter, your honor, other than I just stated. * * * "(Curns' Exhibit "43" above.)

The above quotation appears on pages 8506-8507, Vol. 18, Reporter's Transcript (Pp. 19-20 Typewritten Reply Brief of Petitioners herein).

That the said Assistant United States Attorney in said situation, without notice or knowledge of petitioners, Dora Brady and Lucinda Watashe, or their counsel, at the con-

clusion of the presentation of evidence, delivered to the said trial judge for approval, findings of fact and conclusions of law in favor of the said respondents, Annie Beams, et al., and against these petitioners, Dora Brady and Lucinda Watashe, and said findings and conclusions were thereafter approved by the said trial judge.

(d) That in personally participating in any manner in the said negotiation, approval, and carrying out of said "agreement" or "family settlement", and in permitting the said Assistant United States Attorney to so appear and represent said respondents, Annie Beams, et al., as against these petitioners, and other restricted claimants, and to present requested findings of fact and conclusions of law in favor of the said respondents, and against these petitioners, and in so approving same, the trial judge gravely erred, and was thereafter disqualified to purport to hear and determine the issues herein between petitioners, Dora Brady and Lucinda Watashe, and said respondents, Annie Beams, et al., and to render a judgment consummating said "agreement" or "family settlement". (Pp. 51-54, Petition for Writ and Supporting Brief herein; pp. 79-82, Appellants' Brief in Circuit Court of Appeals, Vol. I, Appendix hereto.)

3. (a) That thereafter and on March 16th and 17th, 1938, approximately 17 months after the beginning of said collaboration between the said Assistant United

States Attorney and the trial judge in and about the approval of the said "agreement" or "family settlement", having as its objective the rendition by said judge of a judgment adjudicating the respondents, Annie Beams, et al., to be the heirs of the said Jackson Barnett, deceased, to the exclusion of petitioners and all other claimants, and almost a year after the approval of the said "agreement" or "family settlement" by the representatives of the Departments of the Interior and Justice of the United States through and as the result of the statements and influence of the said Assistant United States Attorney, and said trial judge, as is stated above (pp. 3-5, *supra*), counsel for petitioners, Dora Brady and Lucinda Watashe, being without knowledge of the existence of the "agreement" or "family settlement," and without knowledge of said collaboration, and the approval thereof by the said representatives of the said Departments, and being without knowledge of the fact that the said trial judge had advised the said Assistant United States Attorney that, *"if approved by the Secretary of the Interior and, if it should not be against public policy within the decisions, he (said judge) would make any orders in his power which would be right and proper to carry same into effect"* (pp. 5-10, *supra*), *undertook in their turn, to present evidence in support of the fact that petitioners, Dora Brady and Lucinda Watashe, were the granddaughters of the said Jackson Barnett, deceased, and entitled to inherit his estate as such* (pp. 56-103, Petition for Writ

and Supporting Brief herein containing *verbatim* record and pp. 36-37 and 54-55, same, presenting grounds 4 and 5 for issuance of said *Writ of Certiorari*).

(b) Petitioners state the fact to be that immediately upon said attempt of counsel for petitioners to so present evidence, and without other cause, ground or provocation, *than the prior execution and approval of said "agreement" or "family settlement"*, said trial judge and counsel for respondents, Annie Beams, et al., concurring and acting in concert, repeatedly and continuously throughout the said two-day proceedings, attacked and charged petitioners, petitioners' counsel, employee, and witnesses with improper conduct, fixing witnesses, perjury, subordination of perjury, lack of legal right to represent petitioners, and immorality, and exhibited such high degree of hostility, evidenced by threats, as to render the further presentation of evidence on behalf of petitioners impossible with the result that said effort was finally abandoned (pp. 36-37; 54-111, Petition for *Writ or Certiorari* and Supporting Brief herein. Presenting reasons 3 and 4 for Writ herein, and *verbatim* record of said charges, acts, threats and doings of said trial judge and counsel for respondents).

(c) *That as the result of the said attacks and charges on the part of the said trial judge and counsel for respondents, and the evident fact that said effort to present evidence on behalf of petitioners was serving and could serve no useful purpose, and was a grim and shocking caricature*

without a single characteristic of a judicial proceeding, counsel for petitioners was constrained to abandon said effort to present evidence in support of petitioners' cause, and that the said trial judge thereupon undertook to intimidate and cause said counsel to withdraw from the representation of petitioners (pp. 96 to 103 of Petition and Supporting Brief for Writ herein where said proceeding is set forth *verbatim*). This concluded the presentation of evidence on behalf of petitioners.

(d) Petitioners respectfully state the fact to be that the record and briefs in this proceeding clearly show that all of the above quoted and set forth, repeated, unprovoked, hostile, threatening, intimidating, and oppressive attacks and charges by the trial judge and opposing counsel, acting in concert, upon and against petitioners, petitioners' counsel, employee, and witnesses, occurred during said effort to present evidence herein in support of petitioners' cause, and subsequent to the said negotiation and approval of the said "agreement" or "family settlement" and were motivated thereby, and that the occurrence of same has not and cannot be questioned (pp. 36 and 54-105, Petition for Writ and Supporting Brief herein); *and that the only effort in said proceedings, and in subsequent proceedings and briefs, to justify said attacks and charges consists of unfounded and unreasonable assertions that same were provoked and justified because of the conduct of counsel for petitioners in asking leading questions, attacking the integrity of the*

trial judge, undertaking to impeach tribal enrollment records, and the ignorance of counsel for petitioners. (See pages 105-111, Petition for Writ and Supporting Brief herein.) *That aside from the fact that not one of said charges is in the remotest degree sustained by the record, if true, same could not excuse or tend to justify said attacks and charges against petitioners, petitioners' counsel, employee, and witnesses.*

4. (a) Petitioners state that immediately following said unsuccessful attempt to present evidence on behalf of these petitioners, the trial judge of his own motion recessed the hearing for a period of three months and until June 20, 1938, and during said recess, and on June 11, 1938, a copy of the said "agreement" or "family settlement" and a part of the said correspondence between said Assistant United States Attorney and the officers of the Departments of Justice and Interior, together with a statement of the acts and doings of said officers, including said trial judge, and counsel for respondents, Annie Beams, et al., in relation to the negotiation, execution, approval, and carrying out of said "agreement" or "family settlement" (pp. 3-10, *supra*), were filed in said cause by counsel for other claimants in connection with and as exhibits to an affidavit to disqualify said trial judge from proceeding further in the purported trial of this action; that five days thereafter and on June 16, 1938, information as to the said acts and doings of the said parties and the trial judge first became

known to counsel for petitioners, and through said counsel first became known to the petitioner, Dora Brady, on June 18th, 1938, two days thereafter, the petitioner, Lucinda Watashe, being absent (pp. 18-20, Petition and Brief for *Writ of Certiorari*); that said information as to the said acts and doings of the said United States Attorney, the trial judge, and representatives of the Departments of Justice and Interior, considered in the light of the attacks and charges by the trial judge, above set forth, convinced petitioners and counsel for petitioners that a plan and agreement existed and was being jointly executed on the part of all of the said officers aided by said trial judge as the above record shows, to defeat the claims of all parties hereto other than the respondents, Annie Beams, et al., who were the beneficiaries of said "agreement" or "family settlement"; and that the said concerted attacks upon, threats and charges against these petitioners, petitioners' counsel, employee, and witnesses by the said trial judge and counsel for said respondents, during the said effort to present evidence on behalf of petitioners, were made and perpetrated with the objective of embarrassing and obstructing petitioners in the presentation of evidence in establishing the facts as to the heirs of said Jackson Barnett and to fatally weaken the evidence in support of the cause of petitioners herein to the end that the rendition of the planned judgment in favor of respondents, Annie Beams, et al., and adverse to petitioners, Dora Brady, et al., should be sustained on appeal.

(b) Petitioners state that so believing, as above stated, and further believing that the said acts, threats, and charges on the part of the said judge during said proceedings were motivated by said "agreement" so offered with the result that the mind of the trial judge was biased and prejudiced personally against petitioners, and in favor of respondents, who were the beneficiaries under said "agreement" or "family settlement"; *that so believing and that said personal bias and prejudice against petitioners was so intense, as is evident from the verbatim record of said acts, threats, and doings, as to completely incapacitate the said trial judge to judicially hear and fairly weigh evidence on the part of petitioners, these petitioners on June 18, 1938, within three days after the said above stated information first came to the knowledge of counsel for petitioners, and on the very day said information came to the knowledge of petitioner, Dora Brady, filed herein their said petition and affidavit to disqualify the trial judge on the ground of personal bias and prejudice, and attached thereto proper certificate of counsel that same was filed in good faith and a verbatim transcript of the proceedings wherein said attacks, threats, and charges occurred, together with copies of said correspondence* (pp. 38-40 and 55, par. 7, Petition for Writ and Supporting Brief herein; pp. 512-546, Vol. I, Clark's Tr., herein; and pp. 82-97, Appellants Brief in C. C. of Appeals, Vol. I, Appendix, hereto).

(c) Petitioners state that upon the filing of the said petition and affidavit to disqualify, said trial judge directed counsel for respondents to file a motion to strike same (pp. 1070-1071, Vol. II, Clark's Transcript, herein); said trial judge then of his own motion made an order admitting the entire record in evidence to be considered in passing upon said petition and affidavit to disqualify (p. 1073 same); then permitted counsel for respondents, Annie Beams, et al., to call the petitioner, Dora Brady (pp. 8651-8656, Vol. 18, Ap.), and her employee, Sim L. Liles (pp. 8630-8642 same), and her attorney, L. J. Burt (8648-8650 same), as witnesses in an effort to disprove the truth of the allegations of the said affidavit although based on proceedings appearing in the record, and the good faith of petitioners in filing same; counsel for respondents, Annie Beams, et al., then were directed to file a response to said application and affidavit to disqualify, *putting in issue the truth of all the allegations thereof; and the trial judge thereafter in writing found and concluded that the said application and affidavit were not filed in due time; that same were not in due form; that although same alleged that petitioners did not have knowledge of the facts alleged therein until about the time of filing same, that although there was no evidence to the contrary the court found said statement to be untrue; and further found that the facts alleged for disqualification were without foundation in truth and in fact and overruled same* (pp. 1185-

1189, Vol. II, Clk's Tr., herein; pp. 76-83, Petition for Writ and Supporting Brief herein).

(d) Petitioners state that as appears from the facts of said petition and supporting affidavit to disqualify said judge, the same are in due form in all particulars, and specifically state and present the record of the numerous acts and doings on the part of the said judge which evidenced the disqualification of said judge to try and determine this action on account of personal bias and prejudice against these petitioners, Dora Brady and Lucinda Watashe, and in favor of the respondents, Annie Beams, et al., and as appears from the unchallenged allegations therein same were filed in due time in that same were filed within 2 days after knowledge of the basic facts became known to petitioners and their counsel.

(e) That it is clear from the face of the said petition and affidavit to disqualify said trial judge, as well as the unquestioned record of the proceedings set forth *verbatim* in the affidavit to disqualify said judge, that the Circuit Court of Appeals in finding and concluding and holding in the opinion herein that said petition and affidavit to disqualify, "fell far short of stating facts showing bias and prejudice of the court and therefore failed to comply with the requirements of the statute," and that same stated conclusions and not facts, and that the same was not filed until approximately sixty days "*after the bias and prejudice of the trial court became apparent*," overlooked all of the

proceedings and facts, since a transcript of the proceedings, showing fully said harsh and criminal charges by the trial court, and the fact of said collaboration of the said Assistant United States Attorney and the trial judge was unknown to petitioners until two days before said petition and affidavit to disqualify was embodied in the said application and affidavit to disqualify said trial judge (pp. 512-547, Vol. I, and pp. 1332-1342, Vol. II, Clk's Tr.; pp. 82-97, Appellants' Brief, Vol. I, Appendix hereto, and pp. 118-122-123, Petition for Writ and Supporting Brief herein).

(f) Petitioners state that any finding of fact on the part of the trial court as to the specific place or places of residence, whereabouts, and family relations of said Jackson Barnett from the time of his birth until he was approximately 39 (1891) years of age when he came to live about in the Senora, later Bryant, or Siah Barnett, neighborhood, which was supported by any evidence, would of necessity identify said Jackson Barnett as being the father of Albert (Barnett) Brady, and the grandfather of petitioners, Dora Brady and Lucinda Watashe, and would necessarily defeat the carrying out of the purpose of said "agreement" or "family settlement", being the adjudication of the respondents, Annie Beams, et al., who only claimed collaterally, to be the heirs of the said Jackson Barnett to the exclusion of Dora Brady, et al., since all the evidence on the part of all the parties, except that of the Kentucky and Tennessee

claimants, conclusively establish that the Jackson Barnett, whose heirs are being herein determined, was the son of Thlesothle, who died about or shortly after the close of the Civil War, and that said Jackson Barnett was left with his aunt and uncle, the Jeffries, and then lived at the home of McCombs, until about grown; then lived at Colberts, where Albert (Barnett) Brady was born, being the son of said Jackson Barnett and Cinda; then lived at Leecher's Ferry until he was approximately 39 years of age; then lived about in the Senora, later Bryant, or Siah Barnett, neighborhood, all being in the Creek Nation, until finally he was taken to California where he died (pp. 5-38, Appellants' Brief in Circuit Court of Appeals, where all the pertinent evidence of the parties is digested, Vol. I, pp. 5-38, Appendix hereto; pp. 2-5, Answer and Reply Brief of Appellants in Circuit Court of Appeals, Vol. I, p. 179, et seq., Appendix hereto; and pp. 11-18, Petition for Writ and Supporting Brief herein).

That in the face of this unquestioned evidence on the part of all said parties, and in the face of the fact that counsel for respondents, Annie Beams, et al., admitted during the said proceeding and in their brief filed in the Circuit Court of Appeals, that the sole question of fact between petitioners, Dora Brady, et al., and Annie Beams, et al., was as to whether the Jackson Barnett, who was the father of Albert (Barnett) Brady, was the Jackson Barnett whose heirs are being herein determined, *said counsel for respond-*

ents significantly did not request the trial court to find any such fact and significantly and successfully opposed the court's approval of the requested findings of fact presented by petitioners, Dora Brady, et al., specifically covering the said most pertinent identifying facts as to said Jackson Barnett's whereabouts, place or places of residence, and family relations during the period of his life prior to reaching the age of 39 years, and that the said objection of counsel for respondents, and the refusal of the said judge to so find was because that any such findings of fact would be inconsistent with and preclude any finding or conclusion or judgment adjudging respondents, Annie Beams, et al., to be the heirs of the said Jackson Barnett. (Brief of Appellees in Circuit Court of Appeals, Vol. II, page 156; pp. 131-139, Brief of Appellants in the Circuit Court of Appeals, Vol. I, page 131-139, Appendix hereto; Answer and Reply Brief of Appellants in the Circuit Court of Appeals, pp. 2-9, pp. 179, et seq., Vol. I, hereto).

(g) Petitioners respectfully state the finding by the trial judge herein "that neither Albert Brady, Mary Fisk, his wife, nor Dora Brady, ever made any effort to cause him (Jackson Barnett) to have any relief, although now it is attempted to be made to appear that they had an interest * * * it was known by them that Jackson Barnett was in distress as disclosed by Exhibit 'I' in evidence * * * " (p. 714, Vol. II, Clk's Tr.; pp. 21-22, Petition for Writ and Supporting Brief herein), is conclusively indicative of the hostile feeling

and highly prejudiced state of mind of the trial judge toward petitioners.

That the uncontradicted evidence of all the witnesses of all the parties who testified in relation to this matter, and which evidence is digested in said Petition for Writ and Supporting Brief herein (pp. 75-76 and 90-93), is contrary to the said finding, and shows that Albert and Dora Brady had the said exhibit, containing the newspaper story, in their possession in 1917, and discussed the situation and affairs of their said father and grandfather, Jackson Barnett, with their neighbors, and there is no fact or circumstance supporting said finding, and same was the fruit of a prejudiced mind. Said Brady Exhibit "I" is a lengthy newspaper account, published September 2, 1917, of the alleged treatment of Jackson Barnett by the officers and representatives of the Interior Department relative to the handling of his great estate, and a facsimile of same is presented in full between pages 122-123 of appellants' brief, Vol. I, Appendix hereto, and the Court is respectfully requested to examine and consider same in connection with the above finding, and it is believed that the conclusion must be that in making such a cruel, unfounded and immaterial finding the mind of the trial judge was necessarily biased and prejudiced against the petitioners (pp. 22-23, 143-144, Petition for Writ and Supporting Brief herein).

(h) It is further evident that the Circuit Court of Appeals in affirming said judgment and this Court in deny-

ing the petition herein overlooked the sound reasoning in *Berger* v. *United States*, 255 U. S. 35, 41 S. Ct. 230, 65 L. Ed. 481, in substance that it is dangerous to commit to the trial judge the decision upon the truth of the facts alleged in the affidavit to disqualify said trial judge and the good faith of the affiant in filing same for the reason that nothing can be more illusive of estimate or decision than the effect of personal bias, prejudice or interest upon the mind of a trial judge, and that it must follow that where the evil of a trial and judgment by a disqualified judge has already occurred, such erroneous judgment should not be accorded the weight, consideration, and presumptions of a judgment fairly and validly rendered, and that this Court in the exercise of its inherent powers, functions, and duties will review such proceedings and judgment through the medium of the *writ of certiorari*.

(h) That the record herein shows the request of said Assistant United States Attorney that an investigator be assigned to investigate all claimants and their witnesses, other than the respondents, and said witnesses (p. 8, *supra*), was granted, and that as a result, both claimants and their witnesses, other than these petitioners, Dora Brady and Lucinda Watashe, and their witnesses, were indicted, tried and convicted of perjury during the said progress of the hearing herein and prior to the entry of judgment, and that a list of same was incorporated in the proceedings

herein at the suggestion of the trial judge (p. 8830, Vol. 18, Rep. Tr.).

4. That the record herein further shows that no improper conduct or crimes of any nature were charged or suggested against these petitioners, Dora Brady and Lucinda Watashe, or against petitioners' counsel, employee, or witnesses herein save and except the said unwarranted, unfounded, and gratuitous verbal attacks and charges preferred by the trial judge and counsel for respondents, Annie Beams, et al., during the said attempt of counsel for petitioners to introduce evidence herein. In this situation it is clear that the references to misconduct and crimes on the part of parties which appear in the opinion of the Circuit Court of Appeals as the basis of said actions and charges have no application to the case of these petitioners, Dora Brady and Lucinda Watashe, *since the record discloses no instances or provocative attitude or action on the part of counsel for petitioners, and since the evidence on the part of petitioners was not challenged, as being fabricated, and was not questioned or contradicted in any part, except by the said hostile and unsupported verbal attacks of the trial judge and opposing counsel* (pp. 103-111, Petition for Writ and Supporting Brief herein). That the fact is said opinion on its face shows that it does not decide the controlling points presented on the separate appeal of these petitioners, Dora Brady, et al.

5. That the finding of the trial court that Jackson Barnett "from his youth up had been and was an incompetent; that he was weakminded, and generally known as 'Crazy Jack,' and that he had never at any time had sufficient mental capacity to enter into a valid marriage contract", is immaterial and contrary to all the evidence on the part of all the witnesses presented by all the parties, *and which evidence is in substance that Jackson Barnett was an average Indian boy and man until after he left Leecher's Ferry in 1891 when about 39 years of age, and thereafter became a roving, shiftless "Snake Indian" and lived about from place to place* (pp. 12-14, 31-32, Petition for Writ and Supporting Brief herein, and volumes of record therein cited; and pp. 9-41, Appellants' Brief, Vol. I, Appendix hereto). *That the conclusion in substance that the issue of said Jackson Barnett could not on that account be legitimate and the petitioners as granddaughters be his next of kin, is contrary to law and the controlling decisions* (pp. 728-737, Vol. II, Clk's Tr., herein; pp. 12-14 and 142-143, Petition for Writ and Supporting Brief herein; and pp. 9-41, Appellants' Brief in Circuit Court of Appeals, Vol. I, Appendix hereto).

6. That the said finding and conclusion of the trial judge that there was no evidence that the parents of Albert (Barnett) Brady, Jackson Barnett and Cinda Colbert, were married, and the conclusion therefrom that "the said Lucinda Watashe and Dora Brady, the children of said

Albert Brady, are not the next of kin and heirs of said Jackson Barnett, Creek Roll No. 4524, whose heirs are being determined herein," and that he was "weakminded and generally known as 'Crazy Jack,' and that he never at any time had sufficient mental capacity to enter into a valid marriage contract" (p. 31, Petition for Writ and Supporting Brief herein), *aside from the fact that same is contrary to all the evidence, as is demonstrated herein, are erroneous for two additional reasons: First, as is presented on pages 124-125 of the Petition for Writ and Supporting Brief herein, since the enrollment record of Albert Brady shows that Jackson Barnett and Cinda Colbert were the parents of said Jackson Barnett, the presumption is they were married, and that he was legitimate, and, second, admitting for argument, although not the fact, that at the time said Jackson and Cinda lived together and Albert was born, said Jackson Barnett was incompetent, still after the death of Jackson Barnett and Cinda Colbert, their marriage cannot be successfully attacked in an effort to show the illegitimacy of the offspring of same.* Hunt v. Hunt, *et al.*, 23 Okla. 490, 100 Pac. 54; *Hughes* v. *Kano*, 60 Okla. 202, 173 Pac. 447; Section 677, O. S. 1931; *Ross* v. *Ross*, 175 Okla. 633, 54 Pac. (2d) 611; pp. 174-177 Appellants' Brief, Vol. I, Appendix hereto, *and the Circuit Court of Appeals overlooked and did not discuss or decide this controlling point.*

7. That the Circuit Court of Appeals further overlooked the fact that the controlling authority holds that in determining the right of Albert Brady to enrollment, as a member of the Creek Tribe of Indians, and determining his identity, information in the form of a notation on the record or card as to whether or not Jackson Barnett, the father of Albert Brady, was living or dead at the time of the listing of Albert Brady for enrollment, or that the said father was a member of any particular Creek Town, was such information as is not required as descriptive of the enrollee under the provisions of Section 21, of the Act of Congress, June 28, 1898, and on that account such notations were immaterial, *and also for the further reason that the Creek Town to which Albert Brady belonged was controlled by that of his mother, Sinda, and such incidental notations*, in the absence of special legislation requiring same, are without effect, and are not admissible in evidence (pp. 124-125, Petition for Writ and Supporting Brief herein; pp. 156-174, Appellants' Brief; pp. 59-61 Petition for Rehearing, Vol. I, Appendix hereto, wherein the above proposition is fully presented).

8. That where the census card or enrollment record of Albert Brady (Brady Exhibit "5"), the father of these petitioners, Dora Brady and Lucinda Watashe, which is in evidence herein, states that Jackson Barnett and Sinda (Cinda, Lucinda) were the father and mother of said Albert Brady, and the census card, or enrollment record of

Lucinda Watashe, formerly Brady (Brady Exhibit "10", p. 4997, Vol. 9, Rep. Tr.) *states that the parents of Lucinda Watashe were said Albert Brady and Alice Fox, it follows, under controlling decisions, and the presumption is that the said parents of both said Albert Brady and Lucinda Watashe were married, and that the said Albert Brady and Lucinda Watashe were legitimate, and that the findings and conclusions of the trial judge herein, in substance, that there was no evidence that said stated parents were married, and that Albert Brady and Lucinda Watashe were illegitimate, are erroneous, and the Circuit Court of Appeals erred in disregarding said authority and in approving said findings and conclusions and affirming said judgment* (pp. 41-42, para. 10 and 12, and pp. 124-125, Petition for Writ and Supporting Brief herein; pp. 156-174 Appellants' Brief; pp. 59-61 Petition for Rehearing, Vol. I, Appendix hereto, wherein the above proposition is fully presented).

9. That the trial judge, either overlooked, ignored or disregarded all the evidence on the part of all the parties, and the admissions, and stipulations on the part of respondents, as to the material and controlling facts, in refusing to approve and make findings of fact based thereon, which were duly and timely requested on behalf of the petitioners, and found all the controlling facts which are pertinent to petitioners' cause in the face of all the evidence on behalf of all the parties, and on that account the judg-

ment herein is contrary to and not supported by any evidence, and the Circuit Court of Appeals overlooked and did not refer to, discuss, or decide the point (pp. 10-18-130-140 Petition for Writ and Supporting Brief herein; Digest of all the evidence on the part of all the parties hereto relating to the cause of petitioners).

10. Petitioners state that while it seems clear from the above that the issuance of a *Writ of Certiorari* to review the said opinion and judgment of the Circuit Court of Appeals is within the legal discretion of this Court under Section 240 of the Judicial Code (Sec. 347 U. S. D. C., tit. 28), the Court also has jurisdiction as is held in *Ex parte Chetwood*, 165 U. S. 443, 17 Sup. Ct. 385; *Shields* v. *United States*, 273 U. S. 583, 47 Sup. Ct. 478; *Quercia* v. *United States*, 289 U. S. 466, 53 Sup. Ct. 698; *In re Church Street Building Corporation*, 299 U. S. 24, 57 Sup. Ct. 88; *Turner* v. *United States*, 14 Fed. (2d) (8th Circuit) 360; *United States* v. *Beatty*, 232 U. S. 463, 467, 34 Sup. Ct. 392, 58 L. Ed. 686; *Berger* v. *United States*, 255 U. S. 22, 41 Sup. Ct. 230; and as stated in Section 6283, Vol. 8, Page 533, of Hughes Federal Practice, to issue said writ herein to review the said opinion and judgment under Section 262, Judicial Code, 28 U. S. C. A., Sec. 377, because the said trial judge, being disqualified, exercised excessive jurisdiction in said proceedings and in rendering said judgment, and the Circuit Court of Appeals erred in not vacating and setting the said judg-

ment aside on that ground (pp. 40, para. 8; 126-130, Petition for Writ and Supporting Brief herein).

11. Petitioners state that, as appears from the opinion in the said five appeals, being the separate appeal of these petitioners, Dora Brady and Lucinda Watashe, No. 2176, and the appeals of four other groups, which were separate and apart from the appeal of petitioners herein, all purporting to have been considered and decided together, but in which opinion the controlling points on petitioners' appeal were not decided, *the Circuit Court of Appeals clearly erred in overlooking or disregarding and failing to consider or decide the above stated grounds or points or reasons which were pertinent to petitioners' case, and wherein controlling questions of law are directly presented, and which, as clearly appears above, are bottomed on facts established by unchallenged evidence, and the Circuit Court of Appeals further erred in according, as the said opinion herein shows, to the proceedings, findings of facts, conclusions of law, and judgment herein of the said disqualified trial judge, the consideration, weight, and effect which are properly accorded to the proceedings, findings, conclusions and judgment of a qualified and unprejudiced judge* (P. 782), lower part, first col., 122 Fed. [2d]), *and the said Circuit Court of Appeals further erred in failing to conclude and hold on petitioners' said appeal that the proceedings, findings, conclusions and judgment herein by said trial judge after said collaboration with said Assistant United States Attorney,*

and subsequent to the filing of the said petition and affidavit to disqualify said judge on account of personal bias and prejudice were all in excess of the jurisdiction of said court, and further erred in failing to set same aside, and remanding said case for trial before a qualified judge, and this Court in concluding that the petition herein did not present any ground for review of the said proceedings overlooked the nature and significance of the above facts and proceedings.

Petitioners state that in their Petition and Supporting Brief for the Writ herein, because of the nature of the questions, the condition of the record herein; and other pertinent facts stated therein, and in compliance with the holding of this Court in *Southern Power Co.* v. *North Carolina Public Service Co.*, 44 S. Ct. 164, 263 U. S. 508, 68 L. ed. 413, and *Furness* v. *Yang-Tsze Ins. Ass'n.*, 242 U. S. 430, 37 S. Ct. 141, 61 L. ed. 409, they have presented a clear, definite, accurate and complete disclosure concerning the proceedings and questions here involved, attaching an appendix of two volumes containing the Briefs of Petitioners and Respondents in the Circuit Court of Appeals, supplying specific references to the record in support of each statement, to the end that members of the Court might readily verify same, and petitioners respectfully refer to the said Petition and Supporting Brief, Answer Brief, Typewritten Reply Brief and Volumes I and II of said Appendix herein.

That upon the foregoing grounds and reasons petitioners most respectfully urge that this Petition for Re-hearing

be granted, and that upon further consideration by the Court the proceedings and judgment herein be reversed, and that this cause be remanded to the trial court for hearing and determination by a qualified judge, or such other relief as may be deemed proper in the premises.

Respectfully submitted,

CHAS. E. MCPHERREN,
442 Key Building,
Oklahoma City, Oklahoma,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL

I, CHAS. E. McPHERREN, counsel for the above named petitioners, Dora Brady and Lucinda Watashe, do hereby certify that the foregoing Petition for Rehearing of this cause is presented in utmost good faith and not for delay.

CHAS. E. MCPHERREN,
Counsel for Petitioners.

March, 1942